

OA091 (Rev. 12/03) Criminal Complaint

FILED - GR

January 22, 2009 9:07 AM

RONALD C. WESTON, SR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: [Signature]

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA
V.
MICHAEL JOHN MODENA

CRIMINAL COMPLAINT

Case Number: 1:09-MJ-304

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about 10/23/08 in MUSKEGON County, in the WESTERN District of MICHIGAN defendant(s) did,

(Track Statutory Language of Offense)

Possession of Firearms in Interstate Commerce by a Felon and a Domestic Violence Misdemeanant

in violation of Title 18 United States Code, Section(s) 922(g)(1) & (9).

I further state that I am a(n) Special Agent-BATFE and that this complaint is based on the following facts:

Official Title

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part of this complaint:

☒ Yes ☐ No

[Signature]

Signature of Complainant

JAMES P. WALSH

Printed Name of Complainant

Sworn to before me and signed in my presence,

1/22/2009

Date

at

GRAND RAPIDS MICHIGAN

City

State

JOSEPH G. SCOVILLE

Name of Judge

US MAGISTRATE

Title of Judge

[Signature]

Signature of Judge

AFFIDAVIT

The affiant, James P. Walsh, being duly sworn, deposes and states as follows:

1. I am a Special Agent (SA) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), presently assigned to the ATF's Grand Rapids Office. I have served as an SA in ATF for the past ten (10) years, and have been involved in the investigation of criminal violations of the Federal firearms, controlled substances, explosives and arson statutes. Prior to being commissioned as an ATF SA, I served as an SA in the U.S. Secret Service (USSS) for six (6) years. During my service as an SA in both the USSS and ATF, I have been the affiant of numerous Federal search and arrest warrants.
2. The following information is provided for the purpose of establishing probable cause to arrest Michael John Modena for violation of 18 U.S.C. § 922(g)(1) & (9) [Possession of Firearms in Interstate Commerce by a Felon and a Domestic Violence Misdemeanant]. Because it is submitted for the limited purpose of establishing probable cause to arrest, this affidavit does not necessarily recite all of the facts of the underlying investigation that are known to me at this time.
3. Based on my querying of the electronic databases in the National Crime Information Center (NCIC) and the records of various courts, I know that Modena's criminal history includes a November 2000 felony conviction in the U.S. District Court for the Western District of Michigan for violation of 18 U.S.C. § 371 [Conspiracy to Commit Income Tax Evasion], in Case No. 1:99-CR-47. I also know that he has a December 2007 misdemeanor conviction in the State of Michigan 60th Judicial District Court for violation of MCL 750.81(2) [Domestic Violence], in Case No. 07091870SM.
4. On October 23, 2008, the Michigan State Police (MSP) arrested Michael John Modena near his residence in Norton Shores, Michigan, based upon a State of Michigan arrest warrant on a charge of filing false Uniform Commercial Code claims. The Michigan State Police then executed a Michigan search warrant at Modena's residence at 6727 Wood Street in Norton Shores.
5. MSP officers recovered two (2) firearms and a box of .308 caliber ammunition during the search. These recovered firearms are further described as a Norinco Model 213 9mm semiautomatic pistol bearing serial number 302336, and a Mauser Model 98 .308 caliber bolt-action rifle bearing serial number 0T16199 with a box of .308 caliber ammunition, both of which were recovered from underneath the bed in the master bedroom.

6. MSP observed that Modena appeared to be the only person residing at this residence. MSP firearms records also disclose that the 9mm pistol bearing serial no. 302336 had been registered to Modena during February 1992, before he sustained his 2000 felony and 2007 domestic violence convictions.

7. I have consulted with ATF SA Brian Luettker, an Interstate-Nexus Expert. SA Luettker informed me that both Norinco and Mauser firearms are manufactured outside the state of Michigan, and that the seized firearms therefore moved in interstate commerce before Modena came into their possession. He also confirmed that the weapons are functioning firearms.

8. Based on the foregoing, I submit that probable cause exists to believe that Michael John Modena violated 18 U.S.C. §§ 922 (g)(1) and (g)(9) in the Western District of Michigan on or about November 7, 2008.

Further your affiant sayeth not,



James P. Walsh
Special Agent
Bureau of Alcohol Tobacco and Firearms

Sworn to in my presence on January 22 2009.



Honorable Joseph G. Scoville
United States Magistrate Judge
Western District of Michigan